

1 STATE OF NEVADA
2 LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
3 RELATIONS BOARD
4

5 RONALD LEE WASHINGTON,
6 Complainant,

7 vs.

8 CLARK COUNTY,
Respondent.

) ITEM NO. 509A

) CASE NO. A1-045718

9 RONALD LEE WASHINGTON,
10 Complainant,

11 vs.

12 CLARK COUNTY,
Respondent.

) CASE NO. A1-045723

13 RONALD LEE WASHINGTON,
14 Complainant,

15 vs.

16 CLARK COUNTY,
Respondent.

) CASE NO. A1-045731

DECISION

17 For Complainant: Kristina Holman, Esq.

18 For Respondent: Yolanda T. Givens, Esq.
19 Clark County District Attorney's Office

20 **STATEMENT OF THE CASE**

21 On October 8, 2001, Ronald Lee Washington (hereafter "Washington") filed a Complaint
22 with the Local Government Employee-Management Relations Board (hereafter "Board"),
23 alleging that Clark County, Department of Aviation (hereafter "Clark County" or "County")
24 failed to proceed to Step 2 in his grievance process although he requested that Clark County do
25 so. This Complaint is Case No. A1-045718 and involved a three-day suspension Washington
26 received in April 2001. The County answered on October 29, 2001, claiming that it was working
27 with Nevada Service Employees Union/Service Employees International Union, AFL-CIO,
28 Local 1107 (hereafter "NSEU/SEIU") in arranging the Step 2 hearing for October 31, 2001. On

1 November 7, Washington filed his prehearing statement and on November 19, 2001, Clark
2 County filed its prehearing statement.

3 On October 24, 2001, Washington filed another Complaint with this Board, alleging
4 similarly that Clark County failed to proceed to Step 2 in his grievance process over a five-day
5 suspension, although he had requested that Clark County proceed to Step 2. This Complaint is
6 Case No. A1-045723. The County answered on November 27, 2001, claiming similarly that it
7 was working with NSEU/SEIU in arranging the Step 2 hearing for October 31, 2001. On
8 December 4, 2001, Washington filed his prehearing statement and the County filed its prehearing
9 statement on December 17, 2001.

10 On January 3, 2002, Washington filed a third Complaint with this Board, in Case No. A1-
11 045731, alleging that the County failed to provide him with documentation from his personnel
12 file, which was necessary for his proper defense on the suspension matters. This Complaint
13 concerned his termination. The County filed its Answer on January 28, 2002. Washington filed
14 his prehearing statement in this matter on February 19, 2002. Clark County filed its prehearing
15 statement in this matter on February 13, 2002, and a supplemental statement on March 5, 2002.

16 On January 18, 2002, the Board entered an order consolidating all three actions.
17 Thereafter, the County filed a Second Supplement to its Prehearing Statement on April 9, 2002,
18 and a Third Supplement on April 11, 2002.

19 On April 18, 2002, the Board held a hearing in this consolidated matter, noticed in
20 accordance with Nevada's Open Meeting Law, at which time the Board heard oral arguments
21 from counsel, received numerous exhibits, and heard testimony from two (2) witnesses, Ronald
22 Washington and Barbara King.

23 The Board's findings are set forth in the Discussion, Findings of Fact and Conclusions of
24 Law, which follow:

25 DISCUSSION

26 Washington's three-day suspension referred to in the first Complaint arose from an
27 incident occurring on April 26, 2001, when it was alleged Washington did not follow his
28 supervisor's instructions in dispatching or directing ["pitching"] taxicabs to waiting customers at

1 McCarran International Airport ("Airport") and for further violation of the employer's work
2 rules and procedures. Ultimately, the Hearing Officer for this grievance determined the
3 suspension was warranted "based on the evidence presented and proof of previous progressive
4 discipline for similar incidents resulting in the same violations of policies and procedures."
5 (County's Exhibit D.)

6 Washington's five-day suspension referred to in the Second Complaint arose from an
7 incident occurring on August 15, 2001, in which he allegedly left his post earlier than his
8 scheduled break time and improperly extended his 15-minute break to a 30-minute break.
9 Washington claimed that there is a five minute travel time added to the front of the break and an
10 additional five minute travel time added to the end of the break. The Hearing Officer noted that
11 Washington in a statement written later in the day claimed, "he took his break and was gone for
12 seventeen minutes and was not late coming back from work." (County's Exhibit D.) The
13 Hearing Officer further noted that no other worker claimed this alleged 10-minute travel time to
14 be added to the break time and commented that it "appears that the grievant [Washington]
15 realized his error in taking a thirty-minute break and changed his story in a written statement
16 when he thought he might be in trouble for violating the break procedure." (County's Exhibit
17 D.) Ultimately, the five-day suspension was affirmed by a hearing officer. (County's Exhibit
18 D.)

19 It was noted that Washington had received the following prior discipline: June 6, 2001,
20 an oral warning; November 16, 2000, a one-day suspension; November 15, 2000, a written
21 reprimand; October 3, 2000, an oral reprimand; February 3, 1999, a three-day suspension and
22 hearing officer affirmation; September 1998, a one-day suspension; and July 17, 1998, a one-day
23 suspension and affirmation by a hearing officer. (County's Exhibit I.)

24 The County submitted Exhibits A through M for consideration by this Board.
25 Washington presented 22 exhibits as itemized in "Complainant's Exhibit List," some of which
26 were prehearing statements filed with this Board. Exhibits 1 through 5 pertain to the first
27 grievance and Washington's first Complaint to this Board. Exhibits 6 through 9 pertain to the

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1 second grievance and Washington's second Complaint to this Board. During Washington's case,
2 additional exhibits were offered (Exhibits 23 through 37).

3 Washington testified he has worked at the airport since 1988. Concerning the three-day
4 suspension, he requested the appeal from Step 1 on June 6, 2001. He again requested the Step 2
5 hearing in August 2001. He indicated he had problems with getting a response from the County
6 concerning the second grievance on the five-day suspension as well until the union got involved
7 (Transcript of Hearing (hereafter "Tr.") p. 22-3). He testified he objected to the consolidation of
8 the two grievances claiming it could result in confusion. (Tr. p. 23-4.) Washington claims at the
9 consolidated hearing, the Union did not present the evidence and witnesses on his behalf as he
10 requested them to do. A decision was made on Washington's first and second grievances, and
11 that response is found as his Exhibit 13.

12 Washington's Exhibit 14 is the beginning of his requests for copies of the County's and
13 the Airport's files on him. He claims the County never gave him "what was important, like such
14 as statements that might have been written by other employees, statements that might have been
15 written by management or by my supervisors. On one occasion they even said they had
16 videotape. They never presented the videotapes." (Tr. p. 49.) However, he later stated they did
17 produce the statements two days prior to the hearing, but he is concerned that they "created" or
18 fabricated these statements after the fact. (Tr. p. 50-1.) Washington further stated that he
19 believes "the union and the County are working together in this matter just because I'm a
20 nonunion member because the simple fact is the union should have gotten in touch with me. I'm
21 paying them to represent me, so it's their job to represent me." (Tr. p. 53.) He also felt that the
22 County is "railroading me out of the system." (Tr. p. 58.) Washington has also filed a
23 complaint with the Nevada Equal Rights Commission (hereafter "NERC") (Tr. p. 59).
24 Washington states he is an African-American and his religion is Pentecostal. (Tr. p. 110.)

25 On cross-examination, Washington did admit that the County did not force him to have
26 union involvement. He also admitted that he was allowed to testify at the consolidated grievance
27 hearing (Tr. p. 76), but it was not as extensive as his questioning-answering before this Board.
28 He further admitted that no one from the County ever informed him that it would throw out his

1 grievance due to his non-member status. (Tr. p. 102.) On redirect, Washington stated he
2 received copies of his personnel file on June 18, September 25, and November 21. (Tr. p. 107.)
3 It was noted that no union representative was present for this Board hearing, as either an
4 observer or as a witness, based upon his attorney's advice. (Tr. p. 111.) Furthermore,
5 Washington believes he was denied promotions due to having filed the NERC complaint. (Tr. P.
6 127.)

7 Barbara King testified on behalf of the County. She is the Employee Relations
8 Administrator, Human Resources and has held that position since 1996 (Tr. p. 152). She and her
9 staff ensure that the various collective bargaining agreements at the Airport are "adhered" to.
10 (Tr. p. 152.) She is also an attorney, however, not licensed in Nevada and participates in the
11 disciplinary hearings and arbitrations. (Tr. p. 153.) She testified about the grievance process,
12 including Steps 1, 2, and 3. She described Step 3 as a "more formal process than our regular
13 disciplinary meetings." (Tr. p. 158.) King also explained the delay in processing Washington's
14 appeal requests; more specifically, she stated she had dealt with Washington before and knew the
15 Union was involved but that Bill Freeman "was not returning my calls." (Tr. p. 163.) In July,
16 the "HR director was reassigned to a different department. There was a certain degree of
17 uncertainty in our department during that time." (Tr. p. 164.) She also stated there was "a huge
18 amount of cases" and a "backlog was developing." (Tr. p. 164.) She even sought the assistance
19 of the District Attorney's office. She stated during a backlog situation, they would try to handle
20 the terminations first, give them a "preference" (Tr. p. 164). The delay affected the grievances of
21 both union and non-union members. The collective bargaining agreement existing between the
22 parties allow the grievant to advance a step should the employer not properly comply with the
23 grievance timelines. Washington and the NSEU/SEIU did not waive the timeline requirement,
24 but also did not file a proper objection based on the delayed process.

25 Ms. King further testified concerning Washington's prior grievances and steps. (Tr. p.
26 174-75.) At the Step 3 hearing in the matter now before this Board, Ms. King stated two union
27 representatives, Jack Canzoneri and Tracey Preston, represented Washington, and the County
28 had no involvement as to the choice of those representatives. (Tr. p. 180-81.) At the final

1 hearing before Hearing Officer Arnold, King stated she did not recall Ms. Arnold restricting
2 Washington's testimony nor did she "seem to chill his rights in terms of testifying." (Tr. p. 184-
3 85.) She further offered that Washington could have passed his representatives notes on the
4 course of the proceedings and that he had other witnesses testify on his behalf. (Tr. p. 185.) She
5 recalled Washington being told to be quieter during the latter part of the hearing, during his case.
6 She believed Washington appeared "somewhat heated, somewhat demonstrative, somewhat not
7 happy, and that's what was causing him to perhaps be louder than just having these regular
8 whispering conversations with his representative." (Tr. p. 219.)

9 FINDINGS OF FACT

- 10 1. Washington has been employed at the Airport since 1988 in various capacities.
- 11 2. Washington was suspended for three days following an incident on April 26, 2001,
12 when he allegedly did not comply with the Airport's rules and regulations and did not follow his
13 supervisor's instructions to "pitch" cabs from outside his booth.
- 14 3. Washington was suspended for five days for an incident occurring on August 15,
15 2001, in which he improperly extended a break period.
- 16 4. Washington filed grievances on these two suspensions and the matters proceeded
17 through Step 1. Thereafter, a delay occurred in the scheduling of a consolidated Step 2 meeting
18 as well as in the Step 3 hearing.
- 19 5. The County claims the delay was incurred because of a transfer of the director for
20 Human Resources and a backlog of cases, and that the delays affected the grievances of both
21 union and non-union members.
- 22 6. Washington claims the delay was because he was not a union member and the
23 meetings and hearing were not scheduled until he sought union involvement.
- 24 7. Washington is an African American male and is a Pentecostal.
- 25 8. Washington has filed a complaint with the Nevada Equal Rights Commission.
- 26 9. Washington has been involved in seven other disciplinary matters (in addition to the
27 three matters now before this Board), occurring on June 6, 2001; November 16, 2000; November
28 15, 2000; October 3, 2000; February 3, 1999; September 1998, and July 17, 1998.

1 10. A collective bargaining agreement exists between the Airport and NSEU/SEIU, and
2 an article therein allows the grievant to advance a step should the employer not comply with a
3 grievance timeline.

4 11. Washington received a copy of his personnel file at three different times (June 18,
5 September 25, and November 21); however, Washington alleges he has never received a
6 complete copy of his personnel file, including any statements and videotape concerning his
7 termination.

8 12. The Step 3 hearing on the two suspensions resulted in the termination of
9 Washington from the Airport.

10 13. Washington claims that the Airport and the County committed a prohibited labor
11 practice by failing to timely proceed to the Step 2 meetings and the Step 3 hearing, by requiring
12 him to have the Union involved in the grievance process, and in failing to provide him with a
13 copy of his complete personnel file.

14 14. Should any finding of fact be more properly construed as a conclusion of law, may it
15 be so deemed.

16 **CONCLUSIONS OF LAW**

17 1. The Local Government Employee-Management Relations Board has jurisdiction over
18 the parties and the subject matters of the complaint on file herein pursuant to the provisions of
19 NRS Chapter 288.

20 2. Clark County is a local government employer as defined in NRS 288.060.

21 3. Washington has failed to provide this Board with the substantial evidence necessary to
22 prove the County committed a prohibited practice in violation of NRS 288.270.

23 4. Although the Board recognizes that the grievance process in the instant case was
24 subject to a number of delays, the delays did not substantially impair Washington's right to due
25 process.

26 5. Should any conclusion be more properly construed as a finding of fact, may it be so
27 deemed.

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DATED this 7th day of May, 2002.

BY: JANET TROST
JANET TROST, ESQ., Member